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5 IN THE UNITED STATES DISTRICT COURT  
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7 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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9 JOHN PETTITT, MURPHY LABRADOR NO. C 07-5854 CW  
10 CORPORATION, MAX GSD TRUST OF 1996 by  
11 BARBARA MUSSER, Trustee ORDER DENYING AS  
12 Plaintiffs,  
13 v.  
14 JOHN CHIANG, individually and in his  
15 official capacity as STATE CONTROLLER  
16 OF THE STATE OF CALIFORNIA,  
17 Defendant.

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18 On January 22, 2008, Defendant John Chiang moved to dismiss  
19 the complaint filed by Plaintiffs John Pettitt, Murphy Labrador  
20 Corporation and Max GSD Trust of 1996 by Barbara Musser, Trustee.  
21 On February 14, 2008, Plaintiffs filed an amended complaint. Rule  
22 15(a) of the Federal Rules of Civil Procedure provides that "[a]  
23 party may amend the party's pleading once as a matter of course at  
24 any time before a responsive pleading is served." A motion to  
25 dismiss is not a "responsive pleading" within the meaning of Rule  
26 15. CRST Van Expedited, Inc. v. Werner Enters., Inc., 479 F.3d  
27 1099, 1104 n.3 (9th Cir. 2007); Crum v. Circus Circus Enters., 231  
28 F.3d 1129, 1130 n.3 (9th Cir. 2000). Because Defendant's motion to  
dismiss is not directed at the operative pleading, it is DENIED

1 without prejudice as moot. The motion hearing scheduled for March  
2 6, 2008 is VACATED. The Case Management Conference is continued to  
3 April 1, 2008, at 2:00 p.m. A joint Case Management Statement will  
4 be due one week prior to the conference.

5 IT IS SO ORDERED.

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7 Dated: 2/22/08

*Claudia Wilken*

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CLAUDIA WILKEN  
United States District Judge